



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of May 27, 2008
Approved June 24, 2008

Members present: Co-Chairman Doug Andrew, Members Jack Baker, Scott Boisvert and Land Use AA/recording Secretary Meredith Bolduc.
Also present: John (Jack) Downing.

Mr. Andrew called the meeting to order at 8:00 p.m. then called the roll.

MINUTES

It was noted that there were only three Board Members present at the April 29, 2008 meeting and all three are needed to make a quorum. The Board received a May 27, 2008 written message from Mr. Hunter stating that his vote would be affirmative to accept these minutes. Mr. Baker made the motion to accept the minutes of the April 29, 2008 meeting as written.
Motion seconded by Mr. Andrew with unanimous favorable vote except for Mr. Boisvert who abstained as he was not present at that meeting.

RESIGNATION

The Board received and regretfully acknowledged Chairman Brett Hunter's letter of resignation from the Zoning Board of Adjustment. The Board wishes Mr. Hunter well in his new role on the Board of Selectmen.

REORGANIZATION OF THE BOARD

Mr. Boisvert nominated Mr. Andrew as Chairman for the ensuing year.
Motion seconded by Mr. Baker with unanimous favorable vote.
Mr. Andrew accepted the position.

Mr. Baker nominated Mr. Boisvert as Vice-Chairman for the ensuing year.
Motion seconded by Mr. Andrew with unanimous favorable vote.
Mr. Boisvert accepted the position.

Case # 07-003
CHILDREN' S FREMONT, LLC
MAP 2 LOT 181
COPP DRIVE

Present: Present: Representing Attorney David Rayment of Cleveland, Waters and Bass Attorneys at Law, Mark Derby also of Cleveland, Waters and Bass, abutters William & Noreen Johnson, Catherine Ladd and Jack Toth.

Mr. Andrew opened this Public Hearing at 8:08 pm and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 8:00 pm on May 27, 2008 in the downstairs Land Use Meeting Room of the Fremont Town Hall to reconsider the Boards' action relative to the Superior Court ordered remand for further reconsideration in case #07-003, Fremont Children's, LLC Map 2 Lot 181, Copp Drive, Fremont, New Hampshire.

You are invited to appear in person or by counsel. Written comments will be accepted up until the date of the hearing.

It was noted that this hearing was noticed on May 12, 2008 at the Fremont Post Office and Fremont Town Hall and in the May 16, 2008 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on May 16, 2008 and all returns have been received except for that of abutter Augevich.

Mrs. Bolduc distributed packets to the ZBA Members that included the April 24, 2007 notice of the denial decision and the minutes of that Public Hearing, the March 3, 2008 Superior Court Judge Lewis's decision to remand the case back to the Board for further consideration and Town Counsel John Ryan's May 5, 2008 cover letter of explanation. With Mr. Andrew's permission, Mrs. Bolduc explained to those present that the applicants in this case, Children's Fremont LLC, came before the ZBA first in February of 2007 seeking an Area Variance to be allowed to construct a 4-plex building on the property with 89' frontage where 280' is required by the Zoning Ordinance, they were denied in April 2007 by a negative vote on the first prong of the hardship test, filed for rehearing, were denied that and took the case to the Superior Court for a ruling. The Judge heard the case and on March 3, 2008 remanded it back to the ZBA for further consideration on the special conditions portion of the hardship on which the Board denied the application which was: Denial of the variance would result in unnecessary hardship to the owner because: Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship as:

- a. the following special conditions of the property make an area variance necessary in order to allow the development as designed:

Mrs. Bolduc clarified that the written statement that followed this condition in italics in the April 24, 2007 minutes submission that said "*The parcel exists with an adequate right-of-way for development*

for the construction of a town road, but with limited road frontage” was Mr. Lavelle’s answer in addressing the condition and was not made by the Board.

Mr. Andrew stated that there is not a full Board present and asked Mr. Rayment if he wanted to wait for the attendance of a full Board for any decisions. Mrs. Bolduc explained that, due to a transition of Board Members, there was not a full Board at this time, but felt that two new Members would be appointed to the Board before the next meeting. Attorney Rayment chose to wait for a full 5 member Board for any decisions on this case. It was agreed to hear any evidence that Attorney Rayment had to present and any abutter comments at this time, but to withhold any vote.

Comment sheets were received from the Conservation Commission, Fire Chief and the Health Officer, each of which had no comment to offer.

Atty. Rayment said that Fremont Children’s LLC has a 14 acre property with approximately 90’ of road frontage and they are seeking to use the property for a 4-plex building. He added that the frontage required for a 4-plex would be 280’ so it was necessary to seek an Area Variance. The ZBA denied the first prong of the hardship test. Atty. Rayment explained that the Courts have distinguished between use variance and area variance and he cited the Boccia and the Simplex cases. He added that Children’s Fremont has met the second prong of the hardship for an Area Variance. Attorney Rayment said that the first thing you have to satisfy on the first prong is that there is something with the property that would make an Area Variance necessary in order to allow the development as designed, which he stated in this case is clearly the lack of frontage. The judge said that the court observed that the lack of road frontage was the thing that was needed to satisfy the first prong of the hardship test and that it appeared that the Board considered the possibility that the petitioner had the option of purchasing land from an abutter. Atty. Rayment offered that if there is something physical with the property, which in this case is the lack of frontage, the first prong of the hardship test is met. He noted that this is a lot that they cannot do anything with unless a Variance is granted.

Mr. Andrew asked if the Abutters had any questions or comments. Mrs. Ladd commented that the 89’ of frontage was given to the property at the time Copp Drive and the Copp development was created and the reason that the 89’ was given for that property was to give a right-of-way access to the Talent property (now Children’s Fremont) to accommodate further development to the Walker piece beyond that. She added that it was engineered so that a road could go through the property and not to build it out.

At 8:35 pm and with no further discussion, Mr. Boisvert made the motion to continue this Public Hearing, as requested by Attorney Rayment, to 7:30 pm on June 24, 2008 when there is a greater possibility to offer a full 5 Member Board to render a decision. Motion seconded by Mr. Baker with unanimous favorable vote.

POINT OF ORDER

8:35 pm. There was a five minute recess at this time.

Case # 08-002
Ioannis Kakouris / Robert Premont
MAP 3 LOT 119
431 Main Street

Present: There was no applicant or representative present.

Mr. Andrew opened this Public Hearing at 8:40 pm and stated that this is a continuation of the April 27, 2008 portion of this hearing which was continued at the request of the applicants representing surveyor Timothy Lavelle's to allow time for more time to resolve the property's Conservation Easement issue.

Mr. Andrew stated that the Board received an e-mail request for withdrawal of the application from Mr. Lavelle dated May 27, 2008. Mrs. Bolduc reported that after that e-mail was received she took a phone call from Mr. Lavelle in which he said that he was previously going to withdraw the application because he had not heard from the Attorney about the Conservation Easement, but had just received it (or heard that it was drafted and was ready for review by Town Counsel) and he wanted to go ahead with the hearing and not withdraw.

At 8:45 Mrs. Bolduc attempted to reach Mr. Lavelle via phone and left a message that the Board was meeting. There was no return message from Mr. Lavelle. There was a brief conversation relative to the application and the confusion about whether the applicant wanted to proceed. It was agreed that since there were conflicting instructions it would be better to continue the Public Hearing to the next meeting so the applicant would, at least, have the opportunity to clarify whether he intends to withdraw the application.

Mr. Boisvert made the motion to continue to 8:00 pm on June 24, 2008.
Motion seconded by Mr. Baker with unanimous favorable vote.

MEMBERS

The resignations of Mr. Butler and Mr. Hunter have left the ZBA with three Board Members. It was noted that Aaron Epstein of 4 Riverside Drive and John (Jack) Downing) of 83 Chester Road have both observed the procedure of the Zoning Board of Adjustment and stated that they are interested in becoming members of the ZBA. The Members agreed that Mr. Epstein and Mr. Downing would be valuable additions to the Board.

Mr. Boisvert made the motion to recommend to the Selectmen that John (Jack) Downing and Aaron Epstein be appointed as Members to the Zoning Board of Adjustment.
Motion seconded by Mr. Baker with unanimous favorable vote.

CORRESPONDENCE

1. Notice of the June 12, 2008 Annual Meeting of the Rockingham Planning Commission at the Atkinson, NH Resort and Country Club.

Next meeting: scheduled for June 24, 2008.

At 9:30 pm Mr. Baker made the motion to adjourn.
Motion seconded by Mr. Boisvert with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary
